

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CRAIG YATES,

Plaintiff,

v.

DELANO RETAIL PARTNERS, LLC,  
doing business as DELANO'S IGA  
MARKET #1; ARTHUR S. BECKER, as  
Trustee of the ARTHUR S. BECKER  
REVOCABLE LIVING TRUST; and  
RALPH'S GROCERY COMPANY,

Defendants.

No. C 10-3073 CW

ORDER DISMISSING  
AS MOOT  
PLAINTIFF'S  
FEDERAL CLAIM,  
DISMISSING  
STATE-LAW CLAIMS  
WITHOUT PREJUDICE  
(Docket No. 81)  
AND DENYING AS  
MOOT PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT (Docket  
No. 75)

Plaintiff Craig Yates moves for summary judgment on certain state-law claims he asserts against Defendants Arthur S. Becker, Trustee of the Arthur S. Becker Revocable Living Trust (Becker), and Ralph's Grocery Company. Defendants oppose Plaintiff's motion and move for summary judgment on all of Plaintiff's state law and federal claims. Plaintiff opposes Defendants' motion. The Court took the motions under submission on the papers. Having considered the papers filed by the parties, the Court dismisses Plaintiff's sole federal claim as moot and declines to exercise supplemental jurisdiction over the state-law claims. The Court also denies as moot Plaintiff's motion for summary judgment.

BACKGROUND<sup>1</sup>

Plaintiff is a paraplegic who is a wheelchair user. Yates Decl. ¶¶ 6-7. On or about August 18, 2009, March 27, 2010, May 6, 2010, June 6, 2010, July 5, 2010, July 29, 2010 and September 3, 2010, Plaintiff went to Delano's Market in San Francisco, California to shop for groceries. Id. at ¶¶ 10-11.

On July 13, 2010, Plaintiff filed the instant lawsuit against Becker and Delano Retail Partners LLC alleging that, on the occasions before that date, he had difficulty accessing the store because of particular architectural barriers. Plaintiff subsequently amended his complaint with leave of the Court to add allegations related to later visits to the store and to name Ralph's Grocery as an additional Defendant. Plaintiff asserts four claims: (1) denial of public access by a public accommodation in violation of the Americans with Disabilities Act (ADA); (2) denial of full and equal access in violation of California Civil Code §§ 54, 54.1 and 54.3; (3) denial of accessible sanitary facilities in violation of California Health and Safety Code § 19955, et seq.; and (4) violation of the Unruh Civil Rights Act, Cal. Civ. Code § 51, et seq.

Becker is the owner of the subject property, including the grocery store and the parking lot. Decl. of Stephen C. Becker (Becker Decl.) ¶ 2. Becker leased the grocery store to Cala Foods, a company related to Ralph's Grocery, which, beginning in 2007, subleased its interest to Delano. Id. at ¶ 4.

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<sup>1</sup> Because the Court decides the motions without considering evidence to which Defendants have objected, Defendants' evidentiary objections are OVERRULED as moot.

1 On October 7, 2010, Plaintiff entered into a settlement  
2 agreement with Delano to resolve its claims for equitable relief  
3 against it. Frankovich Decl. ¶ 1, Ex. A. Delano agreed to  
4 complete all renovations by January 31, 2011. Id. Plaintiff  
5 contends that the agreed renovations were completed. Pl.'s Reply  
6 and Opp. to Cross-Mot. at 3.

7 Becker's lease to Cala Food expired on December 31, 2010.  
8 Becker Decl. ¶ 4. Delano vacated the grocery store at the end of  
9 2010 and the store has been closed since December 31, 2010. Id.  
10 at ¶¶ 3, 5. At the time of closing, Becker had no prospective  
11 tenants and the store was to close indefinitely. Id. at ¶ 5. The  
12 store remains closed today. Id. at ¶ 3.

13 On July 19, 2011, Delano filed for bankruptcy and  
14 subsequently this case was stayed against it. Docket No. 33; see  
15 In re DeLano Retail Partners, Case No. 11-37711 (Bankr. E.D.  
16 Cal.).

17 Briefing on the instant cross-motions for summary judgment  
18 was completed on October 11, 2012.<sup>2</sup>

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21  
22 <sup>2</sup> Defendants object to Plaintiff's late reply in support of  
23 his motion for summary judgment and opposition to the cross-motion  
for summary judgment and request that the Court strike it.

24 On September 13, 2012, Plaintiff filed his motion for summary  
25 judgment. Under the schedule set in the case management order,  
26 Defendants' brief supporting their opposition and cross-motion for  
summary judgment was due by September 27, 2012, Plaintiff's brief  
in reply and opposition to the cross-motion was due by October 4,  
2012 and Defendants' reply was due by October 11, 2012.

27 On September 27, 2010, Defendants filed their opposition to  
28 Plaintiff's motion and their cross-motion for summary judgment,  
along with separate evidentiary and procedural objections.

## DISCUSSION

Defendants move for dismissal of Plaintiff's claims for injunctive relief as moot because the grocery store has closed, and seek judgment that Plaintiff's claims for damages fail because he cannot establish a violation of the ADA or state law. Defendants ask, if the Court does not grant summary judgment in their favor on the damages claims, that the Court instead dismiss the state-law claims for lack of supplemental jurisdiction over them. Plaintiff concedes that his sole federal claim for injunctive relief under the ADA has been rendered moot through the settlement agreement with Delano. Pl.'s Reply and Opp. to Cross-Mot. at 5. Accordingly, the Court GRANTS Defendants' motion for dismissal of Plaintiff's ADA claim as moot.

Because the "jurisdictional questions ordinarily must precede merits determinations in dispositional order," Sinochem Int'l Co. v. Malay. Int'l Shipping Corp., 549 U.S. 422, 431 (2007), the Court considers first the issue of supplemental jurisdiction over

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On October 3, 2012, the Court struck Defendants' separate objections for violation of Civil Local Rule 7-3(a). At that time, the Court gave Defendants leave to file an amended opposition. They did so on October 4, 2012, the date on which Plaintiff's brief in reply and opposition to the cross-motion was due.

Plaintiff then filed his brief in reply and opposition to the cross-motion on October 9, 2012.

Because the Court reaches the same result irrespective of the arguments presented in Plaintiff's brief in reply and opposition, because the Court allowed Defendants leave to remedy their own failure to comply with the filing requirements, and because Defendants' amended brief supporting their opposition and cross-motion was filed on the same date that Plaintiff's brief in reply and opposition to the cross-motion was originally due, the Court OVERRULES Defendants' objection.

1 the state-law claims before reaching their merits. Plaintiff  
2 argues that, although his only federal claim is admittedly moot,  
3 the Court should not decline to exercise supplementary  
4 jurisdiction over the remaining state-law claims under 28 U.S.C.  
5 § 1367. Id. at 4-5.

6 Where a district court has original jurisdiction over some  
7 claims, it also has "supplemental jurisdiction over all other  
8 claims that are so related to claims in the action within such  
9 original jurisdiction that they form part of the same case or  
10 controversy." 28 U.S.C. § 1367(a). However, a court may  
11 nonetheless

12 decline to exercise supplemental jurisdiction over a  
13 claim under subsection (a) if--

14 (1) the claim raises a novel or complex issue of  
State law,

15 (2) the claim substantially predominates over the  
16 claim or claims over which the district court has  
original jurisdiction,

17 (3) the district court has dismissed all claims over  
18 which it has original jurisdiction, or

19 (4) in exceptional circumstances, there are other  
compelling reasons for declining jurisdiction.

20 28 U.S.C. § 1367(c). "[W]hile discretion to decline to exercise  
21 supplemental jurisdiction over state law claims is triggered by  
22 the presence of one of the conditions in § 1367, it is informed by  
23 the [United Mine Workers v. Gibbs, 383 U.S. 715 (1966),] values of  
24 'economy, convenience, fairness, and comity.'" Acri v. Varian  
25 Assocs., Inc., 114 F.3d 999, 1001 (9th Cir. 1997).

26 Here, although Plaintiff disputes whether multiple conditions  
27 under § 1367 are present here, he concedes at least one. Pl.'s  
28 Reply and Opp. to Cross-Mot. at 5. The Court has dismissed the

1 sole claim over which it has original jurisdiction. One condition  
2 is sufficient to trigger the discretion to exercise supplemental  
3 jurisdiction. See, e.g., Acri, 114 F.3d at 1001. Thus, the Court  
4 has discretion to decline to exercise supplemental jurisdiction.

5 As to judicial economy, convenience, fairness, and comity,  
6 Plaintiff argues that the refiling in state court will delay his  
7 relief and cause inconvenience and expense to the parties. In the  
8 case at hand, these factors are not strong. Any delay in  
9 achieving further relief is not burdensome here. The subject  
10 business has closed, Plaintiff's demand for injunctive relief is  
11 moot and the only remaining issue is whether he should recover  
12 statutory damages. Although Plaintiff may incur additional  
13 attorneys' fees to prosecute the remaining claims in state court,  
14 if these claims are determined to be meritorious, he may be able  
15 to recover these fees from Defendants. Defendants have not  
16 complained of any potential inconvenience or expense that they may  
17 experience or for which they ultimately may be held liable.

18 Further, any inconvenience to the parties is outweighed by  
19 other factors. All federal matters have been resolved and only  
20 state matters remain, so comity strongly favors dismissal. The  
21 Court has not considered the merits of the claims, and thus the  
22 interest of judicial economy does not tip the balance in favor of  
23 retaining these claims here. Finally, the Ninth Circuit has  
24 repeatedly upheld the district court's exercise of its discretion  
25 to decline supplemental jurisdiction over remaining state claims  
26 after it granted summary judgment on the federal claims. See,  
27 e.g., Oliver v. Ralphs Grocery Co., 654 F.3d 903, 911 (9th Cir.  
28 2011) (upholding district court's decision to decline to exercise

1 supplemental jurisdiction over state-law claims after granting the  
2 defendants summary judgment on the plaintiff's ADA accessibility  
3 claim); see also Sanford v. MemberWorks, Inc., 625 F.3d 550, 561  
4 (9th Cir. 2010) ("[I]n the usual case in which all federal-law  
5 claims are eliminated before trial, the balance of factors to be  
6 considered under the pendent jurisdiction doctrine--judicial  
7 economy, convenience, fairness, and comity--will point toward  
8 declining to exercise jurisdiction over the remaining state-law  
9 claims.'" (quoting Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343,  
10 350 n.7 (1988))).

11 Accordingly, the Court concludes that the balance of factors  
12 tips against retaining the state-law claims and dismisses these  
13 claims without prejudice.

#### 14 CONCLUSION

15 For the reasons set forth above, the Court DISMISSES AS MOOT  
16 Plaintiff's ADA claim and DISMISSES his state law claims without  
17 prejudice (Docket No. 81). Plaintiff's motion for summary  
18 judgment is DENIED as moot (Docket No. 75).

19 IT IS SO ORDERED.

20 Dated: 10/17/2012

21   
22 CLAUDIA WILKEN  
23 United States District Judge  
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